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No. 06-637

IN THE

Supreme Court of the United States

BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK,
Petitioner,

v.

TOM F., on behalf of GILBERT F., a minor child,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF THE COUNCIL OF THE GREAT CITY SCHOOLS AND THE NATIONAL ASSOCIATION OF STATE DIRECTORS OF SPECIAL EDUCATION AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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BRIEF OF THE COUNCIL OF THE GREAT CITY SCHOOLS AND THE NATIONAL ASSOCIATION OF STATE DIRECTORS OF SPECIAL EDUCATION AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

This brief is submitted on behalf of the Council of the Great City Schools and the National Association of State Directors of Special Education as *amici curiae* in support of Petitioner.[1]

INTEREST OF *AMICI CURIAE*

The Council of the Great City Schools ("Council") is a coalition of 66 of the nation's largest urban public school systems.[2] Founded in 1956 and incorporated in 1961, the Council is located in Washington, D.C., where it promotes urban education through legislation, research, media relations, instruction, management, technology, and other special projects. The Council serves as the national voice for urban educators, providing ways to share promising practices and address common concerns. For the past several years, the Council's legislative and legal staff has participated extensively in congressional consideration of the Individuals with Disabilities Education Act Amendments of 1997, the Individuals with the Disabilities Education Improvement Act of 2004, and the related regulations promulgated by the United States Department of Education. The Council has a strong interest in the outcome of this case as the cost implications for its 66 member school districts would be exorbitant and would negatively impact the districts' ability to serve all of the children enrolled in their public schools.

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[1] Pursuant to Rule 37, blanket letters of consent from the parties have been filed with the Clerk of the Court. No counsel for a party authored this brief in whole or in part, and no person or entity other than *amici*, their members, or their counsel contributed monetarily to the brief.

[2] The Council's membership is set forth in the Appendix.

* * *

The National Association of State Directors of Special Education ("NASDSE") is a not-for-profit organization established in 1938 to promote and support education programs and related services for children and youth with disabilities. NASDSE's members include the state directors of special education in all 50 states.[3]

NASDSE's primary mission is to serve students with disabilities by providing services to state educational agencies to facilitate their efforts to maximize educational and functional outcomes for students with disabilities. NASDSE provides important resources to educators that help improve and enhance the quality of special education services and related curricula provided to students with disabilities.

NASDSE has a particular interest in this case because our members are accountable for the proper implementation of the IDEA. We believe that while private school placements are appropriate in some cases, public funding of these placements should be consistent with the plain language of IDEA that proscribes how and under what circumstances such funding should be made available.

INTRODUCTION AND SUMMARY OF ARGUMENT

The statutory provision in this case – 20 U.S.C. § 1412(a)(10)(C)(ii) of the Individuals with Disabilities Education Act ("IDEA") – could not be more clear. Students to whom a free appropriate public education has not been made

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[3] Members also include the directors of special education in the District of Columbia; the Bureau of Indian Education; the Department of Defense Education Agency; the territories of Guam, Puerto Rico, the Virgin Islands, and American Samoa; and the Freely Associated States of Palau, the Marshall Islands, the Federated States of Micronesia and the Commonwealth of the Northern Mariana Islands.

available, and who have been unilaterally placed in private school by their parents, are permitted to seek tuition reimbursement if, *but only if*, they have "previously received special education and related services under the authority of a public agency." 20 U.S.C. § 1412(a)(10)(C)(ii). This requirement of a bona fide connection between the public special education services ensured by IDEA and the student seeking public funds to finance his education is the only plausible interpretation of the words carefully chosen by Congress. The plain language meaning of the statutory language is also entirely consistent with the underlying purpose of IDEA: to provide students with disabilities a free appropriate *public* education in the least restrictive environment.

Any other interpretation would not only render the relevant subsection superfluous, but would lead to results completely inconsistent with IDEA. Congress and this Court have both made clear that IDEA gives precedence to public schools as the preferred setting for the fulfillment of the statute's mandates. The congressional policy decisions underlying IDEA were aimed at guaranteeing that all students with disabilities would have access to public education, not at creating a program to fund the private education of students with no intention of taking advantage of the public school access ensured by the statute.

School districts face increasingly high costs resulting from private school tuition reimbursement claims, including cases like the instant case where the parents never intended for their child to attend public school at all. The expenditures for private tuition reimbursement divert taxpayer dollars away from public school students and programs. This depletion of funds directly impacts the services that schools are able to provide to the millions of students with disabilities who do receive the public special education and related services that are the cornerstone of IDEA.

Even apart from the fact that the plain language interpretation of the statute requires reversal of the decision below, the Spending Clause independently mandates that the statute not be construed to impose a costly burden on school districts. Spending Clause legislation (such as IDEA) must provide clear notice of the financial burdens it imposes upon the state entities accepting federal funds. Yet here, even the court below deemed the statutory provision ambiguous with respect to the scope of the school districts' reimbursement obligations. Such ambiguity must properly be resolved in favor of the school district.

ARGUMENT

I. A STUDENT WHO IS UNILATERALLY PLACED IN PRIVATE SCHOOL AND WHO HAS NEVER RECEIVED SPECIAL EDUCATION FROM A PUBLIC AGENCY MAY NOT SEEK PRIVATE SCHOOL TUITION REIMBURSEMENT UNDER IDEA.

It is difficult to imagine how Congress could have crafted language that would more clearly and directly answer the precise question that is before the Court. Section 1412(a)(10)(C)(ii) of the Individuals with Disabilities Education Act ("IDEA") directs that a student who has been unilaterally placed by his parents in a private school may bring a claim for private tuition reimbursement only if that student has "previously received special education and related services under the authority of a public agency." 20 U.S.C. § 1412(a)(10)(C)(ii). This provision balances the need to ensure that school districts are actually given a fair opportunity to provide a free appropriate public education to students with disabilities against the right to seek tuition reimbursement in limited circumstances.

A. IDEA's Overarching Purpose Is To Provide A Free Appropriate *Public* Education In The Least Restrictive Environment.

The fundamental principle of IDEA is its guarantee of a "free appropriate public education" in the "least restrictive environment" for all students with disabilities. 20 U.S.C. §§ 1400(d)(1)(A), 1412(a)(5). Congress first made this commitment over thirty years ago in response to a growing realization that American children with disabilities were being substantially underserved by their public school systems. *See* S. Rep. No. 94-168, at 8 (1975) (discussing reasons for enacting IDEA's predecessor and recounting statistics from the Bureau of Education for the Handicapped showing that "of the more than 8 million children . . . with handicapping conditions requiring special education and related services, only 3.9 million such children [were] receiving an appropriate education[,] 1.75 million . . . [were] receiving no educational services at all, and 2.5 million . . . [were] receiving an inappropriate education").

In enacting the Education for All Handicapped Children Act of 1975 ("EHA"), the predecessor to IDEA, Congress expressly recognized that the cost of providing educational services to students with disabilities was the fundamental obstacle facing the public schools. It noted that, although "States have made an effort to comply" with court decisions recognizing educational rights of students with disabilities, a "*lack of financial resources* have prevented the implementation of the various decisions which have been rendered." *Id.* at 7 (emphasis added); *see also id.* at 8 ("Whereas the actions taken at the State and national levels over the past few years have brought substantial progress, the parents of a handicapped child or a handicapped child himself must still too often be told that *adequate funds do not exist* to assure that child the availability of a free appropriate public education.")

(emphasis added). It therefore simultaneously acknowledged the "necessity of an expanded Federal fiscal role," *id.* at 5, and promised the much-needed funds to States that complied with the Act's mandate to provide a free appropriate public education ("FAPE") to all students with disabilities, *id.* at 2, 13 (establishing funding formula).

Congress' decision to focus federal resources on the guarantee of a *public* education was intentional and meaningful.[4] *See, e.g., Cedar Rapids*, 526 U.S. at 78 (in enacting the statute, "Congress intended to open the door of *public* education to all qualified children") (emphasis added) (internal quotation marks omitted). The public schools – both then and now – are ideally situated to educate all students, including those with disabilities, in the most cost-effective way.[5] They also were and are best situated to advance another central goal of IDEA: providing such an education in the "least restrictive environment" ("LRE"), *i.e.*, mainstreaming students with disabilities in the "regular educational environment" to the maximum extent possible, 20 U.S.C. § 1412(a)(5). *See Burlington*, 471 U.S. at 373

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[4] This Court has acknowledged on several occasions the statutory preference for students with disabilities to be educated in the public schools and in the least restrictive environment. *See, e.g., Cedar Rapids Cmty. Sch. Dist. v. Garret F.*, 526 U.S. 66, 78 (1999); *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 12 (1993); *Honig v. Doe*, 484 U.S. 305, 311 (1988); *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 369 (1985); *Bd. of Educ. v. Rowley*, 458 U.S. 176, 202-03 (1982).

[5] For example, Congress expressly referenced the fact that providing funding for special education services in public schools was more cost-effective than the pre-EHA status quo, which often involved institutionalization rather than provision of public education for students with disabilities. *See* S. Rep. No. 94-168, at 9 (recognizing that "[p]roviding educational services will ensure against persons needlessly being forced into institutional settings" and save billions of dollars expended on such placements).

("Congress was concerned about the apparently widespread practice of relegating handicapped children to private institutions or warehousing them in special classes."); *see also Indep. Sch. Dist. No. 283 v. S.D.*, 88 F.3d 556, 561 (8th Cir. 1996) (stating that IDEA's "strong preference" that students with disabilities be educated in their LRE "gives rise to a presumption in favor of . . . placement in the public schools").[6]

Private schools, by contrast, generally are not as well situated with respect to either of these IDEA goals. Private school tuition for special education students typically far exceeds the public school per-pupil cost. *See, e.g.*, Jay G. Chambers, et al., *What Are We Spending on Special Education Services in the United States, 1999-2000?* 12 (2004) (showing that annual per-pupil special education expenditure for school-aged programs operated within public schools is $5,709 compared to $26,440 for school-aged programs oper-

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[6] Congress enacted the EHA largely in response to a "series of landmark court cases establishing in law the right to education for all handicapped children," S. Rep. No. 94-168, at 6, including *Pennsylvania Ass'n for Retarded Children v. Pennsylvania*, 334 F. Supp. 1257 (E.D. Pa. 1971) ("*PARC*"). *PARC* informed the provisions ultimately found in the Act. S. Rep. No. 94-168, at 6; *see also Rowley*, 458 U.S. at 199 (stating that *PARC* and similar cases "undoubtedly informed" the provisions of the Act). *PARC* stated, *inter alia*, that Pennsylvania had an

> obligation to place each mentally retarded child in a free, *public* program of education and training appropriate to the child's capacity, within the context of a *presumption* that, among the alternative programs of education and training required by statute to be available, placement in a regular public school class is preferable to placement in a special public school class, *and placement in a special public school class is preferable to placement in any other type of program of education and training*.

334 F. Supp. at 1260 (emphases added).

ated outside public schools, a figure that includes tuition).[7] And because private schools, unlike public schools, are not open to everyone in a community and consequently do not serve a wide range of students of varying levels of ability, they are less likely to offer opportunities for mainstreaming students with disabilities in the LRE. Instead, as IDEA case law demonstrates, most private schools either serve only mainstream populations of students, or provide only programs for students with specific disabilities. *See, e.g.*, *Winkelman v. Parma City Sch. Dist.*, 411 F. Supp. 2d 722, 732 (N.D. Ohio 2005) (noting that the school district "prefers placing [the student] at [the public school], which focuses on peer interaction," while the parents "prefer placing [the student] at [a private school] which provides almost no opportunity for peer interaction"); *W.C. v. Cobb County Sch. Dist.*, 407 F. Supp. 2d 1351, 1362 (N.D. Ga. 2005) (observing that proposed private school placement was "more restrictive than the placements provided . . . by the School District" and "provided no opportunity for the Plaintiff to receive education with non-disabled peers"); Pet. Br. 14 (discussing educational evaluator's testimony that a "self-contained private school environment" would be too restrictive for Gilbert F., who "should be with non-disabled peers during non-academic activities").

B. The Plain Language Interpretation Of The "Previously Received" Provision Is Consistent With IDEA's Core Purpose.

1. Because the original version of the Act did not explicitly address the issue of private school tuition reimbursement, this Court ultimately was asked to decide whether and

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[7] While this 2004 study compiling data from the 1999-2000 school represents the most recent formal study available, costs have only continued to rise. *See* Part II, *infra*.

to what extent such reimbursement was authorized. With little statutory text to guide its interpretation, the Court concluded that parents *could*, in some instances at least, be reimbursed for private school tuition in unilateral placement cases. *See Burlington*, 471 U.S. at 369. In the absence of any specific statutory provision, the *Burlington* Court grounded its holding in the broad remedial powers IDEA generally vests in the courts. *See id.*

In response to cases such as *Burlington*,[8] Congress amended the statute in 1997 to clarify the parameters of private school tuition reimbursement. These amendments, including the provision at issue here, are part of a comprehensive framework that balances the possibility of private school tuition reimbursement with the core IDEA principles that have animated the Act from the beginning – namely, providing students with disabilities access to the public schools and an entitlement to FAPE in the LRE. Thus, even as the "primary focus of IDEA is and has been the provision of a free appropriate public education . . . within the least restrictive environment . . . for children with disabilities," S. Rep. No. 104-275, at 14 (1996), the 1997 version of the statute included "a number of changes to clarify the responsibility of public school districts to children with disabilities who are placed by their parents in private schools," H.R. Rep. 105-95, at 92 (1997).

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[8] Congress enacted the 1997 amendments in response to a number of cases that arose out of IDEA's lack of specificity regarding the scope of public schools' obligation to provide special education and related services to private school students, including *Burlington* and *Carter* and various decisions of the courts of appeals, particularly *Russman v. Sobol*, 85 F.3d 1050 (2d Cir. 1996), *vacated and remanded sub nom. Bd. of Educ. v. Russman*, 521 U.S. 1114 (1997), and *K.R. v. Anderson Cmty. Sch. Corp.*, 81 F.3d 673 (7th Cir. 1996), *vacated and remanded* 521 U.S. 1114. *See generally* S. Rep. No. 105-17, at 13 (1997); H.R. Rep. 105-95, at 92-93 (1997).

2. The IDEA provision this Court now must interpret is best understood when considered in its full context. At its most general, the 1997 package of amendments reaffirms that tuition reimbursement is disfavored and generally not permitted under IDEA:

> [This subchapter] does not require a local educational agency to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility.

20 U.S.C. § 1412(a)(10)(C)(i). After setting up this baseline prohibition on private school tuition reimbursement, Congress then expressly provides for three limited circumstances in which public funding for services in private schools or private school tuition reimbursement may be appropriate.

First, when parents unilaterally choose private school,[9] the student may receive services under the "proportionate share" provision, which states that amounts expended on special education and related services by a local educational agency ("LEA") for private school students "shall be equal to a proportionate amount of Federal funds made available under this part." *Id.* § 1412(a)(10)(A)(i)(I). This provision does not create an individual entitlement to any services

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[9] Students may become eligible for services pursuant to the "proportionate share" provision in a variety of ways, including when FAPE has been made available, often because parents choose to send their children to religious schools. *See, e.g., Foley v. Special Sch. Dist.*, 153 F.3d 863, 864 (8th Cir. 1998) (parents seeking services under proportionate share provision stipulated that student had been offered FAPE at public elementary school but had been voluntarily placed in parochial school).

from the LEA. *See* 34 C.F.R. § 300.454(a)(1) ("No private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in public school."). Rather, it "expressly provide[s] that public school agencies are not required to pay the costs of special education services for a particular child; States are required only to spend proportionate amounts on special education services for this class of students as a whole."[10] *Foley*, 153 F.3d at 865.

Second, when the public agency and parents agree that the school district is unable to provide FAPE for the student, the school district will refer the student to private school (or another public school district) at no cost to the parents. 20 U.S.C. § 1412(a)(10)(B). This provision is the operative one in cases where there is an *agreement* by the public school districts that a private school or institution is the appropriate placement, as opposed to cases in which parents choose (or "elect[]") to send the student to private school "without consent of . . . the public agency." *Compare id.* §§ 1412(a)(10)(C)(i), (ii).

Third, and finally, Congress added the provision implicated in this case, which provides that students who are unilaterally placed in private school by their parents (*i.e.*, without agreement by the school district that private school is the appropriate placement) *may* be eligible for tuition reimbursement only if certain criteria are met. Specifically:

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[10] School districts have sole discretion to decide how to use proportionate share funds, including determining what services to provide and where to provide them. *See, e.g.*, *KDM v. Reedsport Sch. Dist.*, 196 F.3d 1046, 1048-49 (9th Cir. 1999) (upholding district's decision to provide equipment to student at his parochial school but to provide vision specialist services at a public building).

> If the parents of a child with a disability, *who previously received special education and related services under the authority of a public agency*, enroll the child in a private elementary school or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.

Id. § 1412(a)(10)(C)(ii) (emphasis added). The plain language of the provision limits reimbursement to students who have previously received special education services under the authority of a public agency. Moreover, even students who have previously received public special education services may be denied tuition reimbursement, in whole or in part, if the parents (1) fail to inform the student's IEP[11] team that they are rejecting the proposed placement, (2) did not give written notice to the public agency ten days prior to removing the student from public school, (3) did not make the student available for an evaluation, or (4) otherwise acted unreasonably (*i.e.*, "upon a judicial finding of unreasonableness with respect to actions taken by the parents"). *Id.* § 1412(a)(10)(C)(iii).[12]

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[11] An "IEP" is the Individualized Education Program developed by a team of parents, teachers, and school administrators to, among other things, describe the regular education, special education and related services, and other accommodations necessary to provide a student with FAPE. *Id.* § 1414(d).

[12] The legislative history of this provision confirms the plain language. Congress emphasized that it was adding the new requirement that "[p]reviously, the child must have received special education and related

The "previously received" prerequisite to the availability of tuition reimbursement in cases of unilateral placements in private schools was fashioned in direct response to the growing problem of unnecessary diversion of public resources to private schools: "This bill makes it harder for parents to unilaterally place a child in elite private schools at public taxpayer expense, lowering costs to local school districts." 143 Cong. Rec. H2536 (daily ed. May 13, 1997) (statement of Rep. Michael Castle).[13] Notably, once this prerequisite is met, the amendments preserve courts' discretion to determine whether tuition reimbursement is proper under the familiar balancing test used by this Court in *Burlington* and *Carter*. 20 U.S.C. § 1412(a)(10)(C)(ii) (stating that courts or hearing officers "*may* require" reimbursement if a student who previously received services in public school has been unilaterally placed in private school) (emphasis added). In cases where a student "previously received" public special education and related services, courts must still determine whether FAPE has been provided, *see id.*, and whether parents have acted reasonably in unilaterally placing the student in private school, *id.* § 1420(a)(10)(C)(iii).

3. Requiring prior receipt of public special education services is consistent with IDEA's overall goal of opening the

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services under the authority of a public agency." S. Rep. No. 105-17, at 13.

[13] The amendments were both sought and welcomed by the public schools as a necessary cost-saving measure. One national education organization wrote Congress in support of the legislation, explaining that "[s]everal costly requirements have been removed or modified from current law, such as relief in the area of attorneys fees and *reimbursement of unilateral placements* by parents." 143 Cong. Rec. H2531 (daily ed. May 13, 1997) (entered into record by Rep. William F. Goodling, chairman of the House Education and the Workforce Committee) (emphasis added).

door to public education for students with disabilities. *See* Part I.A, *supra*. As they are presumed to do, school districts carry out their responsibilities under IDEA in good faith. *See Schaffer v. Weast*, 546 U.S. 49, 62-63 (2005) (Stevens, J., concurring) ("I believe that we should presume that school officials are properly performing their difficult responsibilities under this important statute.") The unfortunate reality, however, is that public school districts are frequently saddled with tuition reimbursement in cases where it is evident that the student's parents did not enter the IEP process in good faith and never intended to send their child to a public school. *See* Part II.B, *infra*.

The "previously received" provision mandates that, before they may seek private school tuition reimbursement, parents demonstrate that they are acting in good faith by giving public schools a meaningful opportunity to provide FAPE before unilaterally removing their child from public school. The requirement that parents act in good faith and provide schools with this opportunity is further reinforced by § 1412(a)(10)(C)(iii)(III), which provides that even if a student is eligible for private school tuition reimbursement under § 1412(a)(10)(C)(ii), that reimbursement may still be reduced or denied "upon a judicial finding of unreasonableness with respect to actions taken by the parents." 20 U.S.C. § 1412(a)(10)(C)(iii)(III); 34 C.F.R. § 300.148(d)(3). These requirements prevent abuse by parents who never intended to use the public schools. *See, e.g., Lunn v. Weast*, No. DKC 2005-2363, 2006 WL 1554895, at *7 (D. Md. May 31, 2006) ("The intent is that prior to placing a child in private school, parents must give the public school system an opportunity to provide a FAPE to the child and, where the parent disagrees with the type or level of services provided, to revisit the plan and make adaptations where necessary."); *Balt. City Bd. of Sch. Comm'rs v. Taylorch*, 395 F. Supp. 2d 246, 250 (D. Md.

2005) ("Congress has clearly spoken, and, in order to prevent the FAPE process from being converted to a program for funding private tuition for parents who have demonstrated no commitment to the public school system, it has imposed as a condition for reimbursement the child's initial enrollment in a public school.").

4. Contrary to the lower court's decision, interpreting the statute according to its plain language does not lead to "absurd" results. Compliance with the "previously received" provision in order to obtain tuition reimbursement is not onerous and would require public school placement for only the relatively short period of time necessary to assess the adequacy of the IEP in practice.[14] Everyone, including the hearing officers and courts asked to adjudicate disputes regarding the efficacy of the placement, will benefit from the opportunity to assess the placement in practice, rather than on pa-

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[14] While the statute provides only that the parents must act "reasonably" and does not set forth an express time limit for how long a student must have been enrolled to qualify for tuition reimbursement, other sections of the statute and its implementing regulations provide textual guidelines to aid lower courts in explicating those parameters. *See, e.g.*, 20 U.S.C. § 1412(a)(10)(C)(iii)(I)(bb) (parents must give public agency 10 days' written notice that they are rejecting the proposed placement and "intend to enroll their child in a private school at public expense"); 34 C.F.R. § 300.508(e) (if parents bring a due process claim against the school district requesting reimbursement, the LEA must respond within 10 days of receipt of the complaint); 20 U.S.C. § 1415(f)(1)(B)(i) (after a complaint is filed, a resolution meeting between the parents and members of the students' IEP team must be held within 15 days); 20 U.S.C. § 1415(f)(1)(B)(ii) (LEA must resolve complaint within 30 days of receipt); 34 C.F.R. §§ 300.510(c), 300.515(a) (if complaint is not resolved, the due process timeline begins and a decision must be reached within the ensuing 45 days). Should a dispute arise over this issue in any given case, the lower courts may look to these timing and procedural provisions to help them determine whether a student has a legitimate claim that he or she has "previously received" services.

per.[15] And as this Court has already concluded, when the preferred public school placement can be resolved within a relatively brief period of time, a short delay in achieving an appropriate IEP in the public setting is both tolerable and preferable to private school tuition reimbursement. *Cf. Burlington*, 471 U.S. at 370 (stating that "[i]f the administrative and judicial review under the Act could be completed in a matter of weeks, rather than years, it would be difficult to imagine a case in which" ordering a public school to develop a new IEP would not be preferable to placement in private school despite the fact the student would have to continue with the existing IEP for a short period while a new one was developed).

Moreover, Congress provided several statutory mechanisms through which parents can attempt to resolve any concerns about the program offered by the public school short of the drastic step of removing their child from the public school system before it has had a chance to provide services. In addition to the required non-adversarial resolution meeting that occurs before the start of any due process hearing, *see* note 13, *supra*, when a dispute regarding the child's placement escalates to the point of requiring formal resolution, IDEA provides parents with a voluntary mediation option that is funded by the state. 20 U.S.C. § 1415(e)(1). IDEA also establishes a separate state complaint process to remedy alleged school district violations of IDEA requirements. 34 C.F.R. § 300.660. If parents opt to file a formal complaint with the state through this procedure, the state

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[15] Common sense dictates that if IEPs are given a chance to work, disputes over reimbursement between parents and school districts will be reduced. As the district court observed in *Lunn*, requiring a student to receive services in a public school for at least some period of time gives the district a meaningful opportunity to revisit IEPs and make adjustments where necessary. 2006 WL 1554895, at *7.

educational agency ("SEA") is required to investigate and resolve the issue within sixty days. *Id.* § 300.661. Similar to the authority of a hearing officer, the SEA may order corrective action to address the child's needs including compensatory education services such as occupational therapy, education beyond the age of twenty-one, and tutoring.[16] The SEA must also address the provision of appropriate future services. *Id.* § 300.151(b).

For all of these reasons, compliance with the "previously received" requirement of §.1412(a)(10)(C)(ii) does not leave parents without options when they believe a proposed placement is inappropriate for their child. Far from leading to absurd results, § 1412(a)(10) represents a reasonable, holistic approach to the provision of special education services in private schools under IDEA, and the "previously received" provision merely ensures that school districts are first given an opportunity to provide those services themselves.

Instead, it is the court of appeals' interpretation that leads to absurd results. That interpretation reads the "previously received" language out of the statute and allows parents to bring claims for private tuition reimbursement under the general provision of IDEA exactly as they could have done

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[16] *See, e.g.*, *Evanston Cmty. Consol. Sch. Dist. No. 65 v. Michael M.*, 356 F.3d 798, 803 (7th Cir. 2004) (affirming award of compensatory services in form of 60 minutes of occupational therapy per week); *Ridgewood Bd. of Educ. v. N.E.*, 172 F.3d 238, 249 (3d Cir. 1999) ("An award of compensatory education allows a disabled student to continue beyond age twenty-one in order to make up for the earlier deprivation of a free appropriate public education."); *J.C. v. Vacaville Unified Sch. Dist.*, No. S-05-0092 FCD KJM, 2006 WL 2644897, at *7-8 (E.D. Cal. Sept. 14, 2006) (ordering district to pay family who had moved out of the region the fair market value for a private provider to perform the services included in the compensatory education package offered by the district, including one-on-one instruction by a trained assistant and consultation with a behavior analyst).

before the amendment. Such an interpretation is inconsistent with many canons of statutory construction routinely relied upon by this Court. *See, e.g.*, *FCC v. Nextwave Personal Comms. Inc.*, 537 U.S. 293, 307 (2003) (rejecting statutory interpretation that not only "distort[ed] the text of the provision" but "render[ed] the provision superfluous"); *United States v. Wilson*, 503 U.S. 329, 336 (1992) (restating "the familiar maxim that, when Congress alters the words of a statute, it must intend to change the statute's meaning"); *Green v. Bock Laundry Mach. Co.*, 490 U.S. 504, 524 (1989) ("A general statutory rule usually does not govern unless there is no more specific rule.").

Finally, as shown in the next Part, adopting Respondent's interpretation of the provision at issue here would have precisely the opposite effect from the one intended by Congress. The legislative history of the 1997 amendments as a whole, and of the "previously received" provision in particular, demonstrates Congress' intent to reduce school districts' costs under IDEA. *See, e.g.*, 143 Cong. Rec. H2536 (statement of Rep. Michael Castle) ("This bill makes it harder for parents to unilaterally place a child in elite private schools at public taxpayer expense, lowering costs to local school districts."); 143 Cong. Rec. H2537 (daily ed. May 13, 1997) (statement of Rep. Buck McKeon) (observing that the 1997 amendments "provide more dollars to the classroom, reduce the costs of litigation, and reduce paperwork and process costs"). Costs to school districts for private school tuition reimbursements resulting from unilateral placements are already high; if the decision of the court of appeals is not reversed, these costs may quickly become exorbitant for school districts nationwide.[17]

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[17] The court of appeals' interpretation of the statute also invites students currently receiving services under the "proportionate share" provision to request IEPs from their districts and then seek tuition reimburse-

II. TUITION REIMBURSEMENT IMPOSES HIGH COSTS ON SCHOOL DISTRICTS AND DIVERTS RESOURCES AWAY FROM SPECIAL EDUCATION IN PUBLIC SCHOOLS.

Public schools have diligently undertaken the great responsibilities with which they have been entrusted by IDEA. For decades, they have scrupulously fulfilled their statutory mandate to provide FAPE to students with disabilities.

However, most public school systems must operate within tightly constrained budgets. IDEA imposes great costs on these school districts, and private school tuition reimbursement claims by students who have never been "previously enrolled" in public school special education programs would dramatically increase these already-high costs. Such claims divert resources from their intended and best use: providing IDEA services to public school students who need and want to receive them.

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ment, claiming they have been denied FAPE. Districts would first be forced to incur huge costs to develop IEPs for these students. *See* Chambers, *supra*, at 14 (during the 1999-2000 school year, districts spent about $6.7 billion on assessment, evaluation, and development of IEPs). On top of this initial burden, districts could then face the high costs of litigating all these claims, despite the likelihood that they would be able to show that the student would be ineligible for reimbursement because the district could provide FAPE. *Id.* at 5 (during the 1999-2000 school year, districts spent approximately $90.2 million on mediation and administrative hearings and $56.3 million on litigation). As shown at note 21, *infra*, districts choose to settle a large percentage of these types of cases because they have neither the monetary nor personnel resources to fully litigate them.

A. Tuition Reimbursement Costs To Individual School Districts Are Already High And Would Only Increase If Respondent's Interpretation Is Adopted.

In one recent school year, public schools spent over 20% of their general operating budgets on special education students. Thomas Parrish et al., Center for Special Education Finance, *State Special Education Finance Systems, 1999-2000: Part II: Special Education Revenues and Expenditures* 22 (2004).[18] A significant portion of these costs are attributable to expenditures for services outside the public schools, including tuition reimbursement. During that same school year, for example, $5.3 billion of the $36 billion spent on special education services for school-aged students funded "students placed in non-public school programs or programs operated by public agencies or institutions other than the public school district . . . includ[ing] tuition" and other expenses. Chambers, *supra*, at 10.

Even more striking is the contrast between the costs associated with public and private special education programs. The average expenditure per school-aged student in public school special education programs was $5,709, while the average special education expenditure per school-aged student in programs operated outside the public schools was $26,440 – nearly five times as much. *See id.* at 12; *see also* Boston

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[18] The total spent to educate all special education students (both preschool and school-aged) was over $78 billion. Parrish, *supra*, at 22. Of this, schools spent approximately $50 billion on special education services, $27.2 billion on regular education services for students with disabilities, and $1 billion on other special needs programs (such as Gifted and Talented education) for students with disabilities. *Id.*; *see also* Chambers, *supra*, at 2 (same). Approximately $36 billion of the $50 billion spent on special education services was spent on school-aged children. Chambers, *supra*, at 10.

Pub. Schs. Tuition Survey (average fiscal year 2006 per-pupil expenditure on special education in public schools was approximately $20,000, while the average per-pupil expenditure on private special education was $54,340).[19]

While the financial impact of private school tuition reimbursement is overwhelming for public school districts in the aggregate, the costs to individual districts of funding special education in private school is even more so. For example, in the 2005-2006 school year, New York City spent over $245 million on agreed-to private school placements, and it has already spent over $228 million on these placements in this academic year. *See* New York City Dep't of Educ. Tuition Survey. New York's total expenditure on students receiving special education in private schools in 2005-2006 was approximately $390 million. *Id.* This year, the city has budgeted almost $824 million to pay for private school education. Alyssa Katz, *The Autism Clause*, N.Y. Mag., Oct. 30, 2006, at 52. Costs are similarly high in other urban districts. *See, e.g.*, Los Angeles Unified Sch. Dist. Tuition Survey (average amount paid for private school tuition for students with disabilities was $14,690 in the 2004-2005 school year and $17,042 in 2005-2006, with total tuition expenditures of approximately $1.5 million in 2004-2005 and of almost $2 million in 2005-2006); Miami-Dade County Pub. Schs. Tuition Survey (amount spent to settle three reimbursement cases in the 2005-2006 school year totaled nearly $200,000).

School district data shows that tuition reimbursement costs are even higher in cases involving students who have been unilaterally placed in private schools by their parents. In New York City, "[t]he cost of claims for unilateral placements in private schools is estimated at over forty million

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[19] All school district tuition data surveys cited herein are on file with the Council of the Great City Schools.

dollars per year." New York City Dep't of Educ. Comments on Regulations for the IDEA, 160 PLI/NY 253, 256 (Sept. 2, 2005) ("New York Comments"); *see also* New York City Dep't of Education Tuition Survey (total spent on unilateral placement cases was over $45 million in 2004-2005 and over $49 million in 2005-2006). In the last three academic years, the average settlement per-pupil paid by New York City in unilateral placement cases was $17,900.57 (2003-2004), $18,551.70 (2004-2005), and $13,716.78 (2005-2006). In Boston, the average tuition reimbursement settlement in such cases was similarly high – $36,885 in the 2004-2005 school year and $21,424 in the 2005-2006 school year. *See* Boston Pub. Schs. Tuition Survey.

These costs will only continue to rise as the cost of private school tuition steadily increases. Costs will rise even more dramatically if the court of appeals' interpretation is adopted, and as the number of for-profit schools providing special education increases. One such school in New York City that provides various types of therapy to developmentally disabled students "enrolls more than 300 and collects $21,821 per student from the city each year," and more and more schools like this are opening. Katz, *supra*, at 52 (discussing the recent opening of several such schools in New York, including one with annual tuition of $26,500, an autism-focused school with annual tuition of $72,500, and another autism-focused school[20] that charges $84,000 per year).

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[20] This school's program has been described as the "gold standard." Katz, *supra*, at 132 (also noting that the supervisor of pediatric psychology at Rusk Institute at the NYU Medical Center observed that the downside of such schools is the "tremendous expense"). Students at this school routinely receive public funding for their tuition, *id.*, despite the fact that IDEA guarantees only an appropriate education, not the best education possible, *see Rowley*, 458 U.S. at 197 (Congress in IDEA did not require schools to provide a "potential-maximizing education"); *Doe v. Bd. of Educ.*, 9 F.3d 455, 459-60 (6th Cir. 1993) (IDEA requires only

Indeed, a student in one of these schools recently brought a reimbursement claim for the 2004-2005 school year seeking more than $230,700 in tuition and related services. *See* New York City Dep't of Educ. Tuition Survey. The founder of some of these schools has stated that he fully expects all parents who enroll their children in his schools to sue the City for tuition reimbursement. *See id.*

The New York City model is unique in that over half of its due process hearing requests involve tuition reimbursement for private unilateral placements, *see* New York Comments, *supra*, at 256, and in almost half of those cases, the child has never attended public school, *see* New York City Dep't of Educ. Tuition Survey (data from 2005-2006 school year). Yet this model could well become the rule rather than the exception if the court of appeals' anomalous interpretation becomes the law of the land. Even if school districts could theoretically win many or most such lawsuits by showing that they could have provided FAPE, the administrative, litigation, and potential settlement costs of these cases are staggering, as New York City's data shows.[21]

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that the district provide "the educational equivalent of a serviceable Chevrolet," not a "Cadillac").

[21] As the New York City experience demonstrates, districts will often agree to settle these cases and pay tuition or some portion of it rather than face litigation. In both the 2004-2005 and 2005-2006 academic years, New York City settled approximately 39% of the requests it received for impartial hearings in unilateral placement cases. *See* New York City Dep't of Educ. Tuition Survey. Total settlement costs in those years were $34,858,635 and $29,910,996, respectively. *Id.* These settlements are most often unrelated to the relative merits of any given case. Rather, they reflect the fact that settlement is often preferable to incurring high litigation costs and is often the only option given that the City has only 15 special education attorneys and one managing attorney to handle the thousands of impartial hearing requests made in unilateral placement cases each year, and relies on a team of only 18 paralegals and one attor-

B. Tuition Reimbursement In Cases Where Parents Never Intended To Use Public Schools Would Further Drain Resources Needed For Public Special Education.

IDEA was intended to provide public education, not to use taxpayer money to fund private education. *See* Part I.A, *supra*. Nevertheless, many parents ask public school districts to develop an IEP for their child despite intending from the outset to reject whatever IEP is developed and then claim that the district is unable to provide FAPE (often without even visiting or evaluating the proposed public school placement). These parents, who never intended to use the public schools, unilaterally place their child in the private school in which they planned to enroll their child all along, and then request reimbursement, hoping for a windfall.[22] *See generally* Cindy L. Skaruppa, et al., *Tuition Reimbursement*

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ney to settle these cases. *Id.* (showing that New York City received approximately 2,244 such requests in 2004-2005 and approximately 2,538 in 2005-2006). Other districts have even fewer attorneys to deal with these cases and would be even more pressed than New York in dealing with increasing numbers of reimbursement claims. Council member districts Chicago Public Schools and The School District of Philadelphia, for example, each employ only 4 lawyers to handle IDEA litigation.

[22] Parents are often prompted to make these requests. Some schools routinely distribute to all prospective parents a folder titled "Reimbursement for Placement Made By Parents in a Private School" that lists "contact information for five lawyers and basic instructions on how to sue the city of New York." Katz, *supra*, at 52. Private education consultants hired by parents to navigate the special education process also often steer their clients to private schools for which reimbursement is then sought. *See generally* Ylan Q. Mui, *For-Hire Advocates Help Parents Traverse System*, Wash. Post, Oct. 5, 2004, at A17. For example, the very policy letter relied upon by the court of appeals was sought by Susan Luger, Pet. App. A-11, an education consultant who has brought 528 reimbursement cases against the Petitioner from July 1, 2002 through May 3, 2007. *See* New York City Dep't of Educ. Tuition Survey.

for Parents' Unilateral Placement of Students in Private Institutions: Justified or Not?, 114 Educ. L. Rep. 353 (1997).

In this case, for example, Respondent requested reimbursement after admitting that he never intended to enroll his child in the proposed placement, had already submitted a down payment to the private school when he requested that the school district evaluate his son, and never visited the proposed public school placement or met with representatives from the school. Pet. Br. 10-11, 14-15. Similar fact patterns are commonplace. *See, e.g.*, *M.M. v. Sch. Bd.*, 437 F.3d 1085, 1090-93 (11th Cir. 2006) (parents participated in IEP process but made clear from the outset that they wanted to continue their child's current private school placement and wanted a particular form of therapy the district did not provide, then proceeded to reject the district's IEP – offering a different but established therapy – and to request reimbursement); *Burke County Bd. of Educ. v. Denton*, 895 F.2d 973, 976 (4th Cir. 1990) (parents presented district with a fully formulated plan of services for their autistic son before even requesting an IEP, rejected the district's proposed IEP, and sought reimbursement when the district agreed to fund only part of the requested plan); *Weast v. Schaffer*, 240 F. Supp. 2d 396, 401 (D. Md. 2002) (observing that ALJ had found "that there was a design by the parents to simply obtain funding from [Montgomery County Public Schools] for a predetermined decision to have the Child attend private school"), *rev'd on other grounds by* 377 F.3d 449 (4th Cir. 2004), *aff'd Schaffer*, 546 U.S. 49 (2005); *Lunn*, 2006 WL 1554895, at *3-4 (parent did not request an IEP until after she had paid a substantial tuition deposit and signed an enrollment contract obligating her to pay over $36,000 even if her child withdrew at any point before or during the school year).

This diversion of public resources toward payment of private school tuition directly impacts educational outcomes

for students who receive special education services in public schools. Every dollar spent on tuition reimbursement is a dollar that can no longer be spent to improve public special education programs.[23] *See* Skaruppa, *supra*, at 357 (observing that funds spent on reimbursement in unilateral placement cases "could be more efficiently and effectively used within the public school setting to educate a greater number of students"). It disproportionately impacts students with the greatest need for public services, namely those whose families cannot afford to seek services outside the public school system.[24] This Court acknowledged that socio-economic

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[23] An example from the attorneys' fees context starkly illustrates the positive educational impact that occurs when previously diverted resources are put back into public school special education programs. When the attorneys' fee cap in IDEA cases was reinstituted in the District of Columbia in fiscal year 2003, public schools there saved $4.4 million. 150 Cong. Rec. S5352 (daily ed. May 12, 2004) (statement of Sen. Hutchison). "Based on those savings, DCPS was able to create 550 new classroom seats at 50 schools during the 2003-2004 school year to serve children with special needs, including children with autism, children who are hearing or vision impaired, mentally retarded, learning disabled or emotionally disabled, and early childhood education students." *Id.*; *see also id.* (noting that savings from the fiscal year 2004 attorneys' fee cap would again be "reinvested into capacity building" and were expected to result in the creation of 450 additional classroom seats).

[24] Private school tuition reimbursement is typically sought by parents who are familiar with the intricacies of IDEA and who have the resources to pay private school tuition out-of-pocket while they are seeking reimbursement. *See* Skaruppa, *supra*, at 354 ("Families of middle and high SES [socio-economic status] choose private programs because they often have money available to educate their children privately and know there is a good chance it will be reimbursed."); *id.* ("Students of low SES parents often do not have the same consideration as their higher SES peers because low income parents do not have the available capital to pay for their child's placement, particularly when they are unaware or uncertain of reimbursement."); Ylan Q. Mui, *For-Hire Advocates Help Parents Traverse System*, Wash. Post, Oct. 5, 2004, at A17 (observing that parents "often spend considerable amounts of money" in hiring educational

reality when it recognized in *Burlington* that "parents who unilaterally change their child's placement during the pendency of review proceedings, without the consent of state or local school officials, do so *at their own financial risk*." 471 U.S. at 373-74 (emphasis added). Adoption of the court of appeals' interpretation would only exacerbate this problem, increasing the number of reimbursement cases and thereby diverting still more public resources to private schools – all to the detriment of public school programs, the students and parents who lack the resources to pay for private school, and those who give the public school programs a good-faith chance to succeed.

III. UNDER THE SPENDING CLAUSE, CONGRESS COULD NOT HAVE IMPOSED SUCH A BURDEN WITHOUT PROVIDING CLEAR NOTICE.

As already explained in Part I, the plain language of the Act compels the conclusion that students who have never received services from public schools are not eligible for reimbursement for private school tuition. *See also* Pet. Br. 24-34. But even if the court of appeals were correct that the statutory language confessed to some ambiguity, that conclusion would only confirm the error of its ultimate holding. The Spending Clause independently mandates reversal because the statute provides no clear notice that Congress in-

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consultants to navigate special education rules and place students in "therapeutic schools," and that the average family income of one educational consulting firm's clients "is about $75,000 per year"); *see also, e.g.*, *M.M.*, 437 F.3d at 1090 n.3 (noting that student's mother taught at the private school she attended); *Greenland Sch. Dist. v. Amy N.*, 358 F.3d 150, 152 (1st Cir. 2004) (student's mother was a special education teacher); *Student v. Los Angeles Unified Sch. Dist.*, OAII No. 2005070562, at 1 (Decision dated Mar. 2, 2006) (student represented in tuition reimbursement proceedings by her mother and grandmother, both attorneys).

tended to impose on the states the high costs attendant to the court of appeals' interpretation.[25]

This Court repeatedly has held that when Congress enacts legislation placing conditions on the receipt of federal

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[25] As an initial matter, the Court may consider the Spending Clause argument even though it was not raised below. It is well-settled that "[o]nce a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below." *Yee v. City of Escondido*, 503 U.S. 519, 534 (1992); *see also Harris Trust & Sav. Bank v. Salomon Smith Barney Inc.*, 530 U.S. 238, 245 n.2 (2000). The core question presented here and litigated below – namely, whether IDEA unambiguously bars tuition reimbursement where a student has never received services from a public school – plainly encompasses the question whether a contrary interpretation is barred by the clear notice requirement of the Spending Clause. Respondent cannot claim to be taken by surprise by the Spending Clause argument as it was raised in the petition for certiorari and is an underlying issue in all IDEA cases raising questions about the scope of districts' funding obligations. *Cf. PGA Tour, Inc. v. Martin*, 532 U.S. 661, 678 n.27 (2001) (exercising discretion to consider argument not made in the court of appeals when the general issue had been raised in the lower courts, "petitioner advanced this particular argument in support of its position on the issue in its petition for certiorari, and the argument was fully briefed on the merits by both parties").

Indeed, this Court decided *Arlington Central* on Spending Clause grounds even though that precise argument had not previously been raised. *Compare Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 126 S. Ct. 2455, 2463 (2006) (holding that school districts were not required to compensate prevailing parents for expert witness fees because the statute did not provide clear notice of such an obligation as required by the Spending Clause), *with* Resp. Br. in *Arlington Central*, 2006 WL 838890, at *16, *48 (arguing that this Court should not consider the petitioner's Spending Clause arguments because it was not raised below). Thus, there is no bar to the Court's consideration of the issue here, and deferral of the question would only result in inefficiency. *See, e.g., Carlson v. Green*, 446 U.S. 14, 17 n.2 (1980) (concluding "that the interests of judicial administration [would] be served by addressing the issue [not raised below] on [the] merits" where it had been "squarely presented and fully briefed" and was "an important, recurring issue").

funding pursuant to its Spending Clause power, as it has done here, the intent to impose such conditions must be made unambiguously clear in the text of the statute itself. *See, e.g., Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981) ("[I]f Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously."); *see also Rowley*, 458 U.S. at 190 n.11 & 204 n.26. The Court emphasized in *Pennhurst* that "legislation enacted pursuant to the spending power is much in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions." 451 U.S. at 17. Consistent with basic contract law principles, therefore, the terms of the bargain that Congress asks the States to accept when it imposes conditions on federal funding must be unambiguous – if they are not, the States cannot make a knowing, fully informed decision whether to accept the deal they have been offered. *See id.*

The Court made clear in *Arlington Central* that any inquiry into whether the IDEA is sufficiently clear as to the conditions placed on federal funding under it must be undertaken "from the perspective of a state official who is engaged in the process of deciding whether the State should accept IDEA funds and the obligations that go with those funds." 126 S. Ct. at 2459. Here, the crucial question is "whether such a state official would clearly understand that one of the obligations of the Act" is to reimburse private school tuition for students who never previously received public school special education and related services, despite the clear statutory language to the contrary. *Id.* The answer is plainly no.

As demonstrated in Part I, the plain language of the statute clearly states that reimbursement is *unavailable* in such circumstances. Even if one refused to accept this plain language interpretation and adopted the court of appeals' holding, the "previously received" provision added to the IDEA

as part of the 1997 Amendments would at least render the reimbursement requirements ambiguous. *See Frank G. v. Bd. of Educ.*, 459 F.3d 356, 370 (2d Cir. 2006) (turning to canons of statutory construction because "the terms of" IDEA "are ambiguous"). But ambiguity cannot be condoned in the context of Spending Clause legislation. As discussed above, the costs associated with private school tuition reimbursement are high, *see* Part II, *supra*, and state officials must be afforded clear notice of the full scope of their reimbursement obligations when determining whether to accept conditional federal funding under the IDEA.[26]

CONCLUSION

For the foregoing reasons, the judgment below should be reversed.

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[26] The magnitude of the costs that would be imposed on school districts under Respondent's interpretation far exceeds that of most cases involving the Spending Clause; the costs potentially imposed under the expert witness fees provision at issue in *Arlington Central*, for example, pale by comparison. While every public school district wants to continue to serve all students, including those with disabilities, costs eventually may become prohibitive. Notably, although Congress originally promised to fund 40% of states' costs of compliance with IDEA, 20 U.S.C. § 1411(a)(2); S. Rep. No. 94-168, at 4, Congress now funds only about 18% of total special education spending. Richard N. Apling, Congressional Research Service, *Individuals with Disabilities Education Act (IDEA): Current Funding Trends* 9 tbl. 5 (Feb. 2005). In this context, where districts already bear the brunt of funding compliance with IDEA, the high additional costs imposed by Respondent's interpretation would weigh heavily in the calculus of whether to accept federal funds.

Respectfully submitted,

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APPENDIX

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Member school districts of the Council of the Great City Schools include Albuquerque Public Schools, Anchorage School District, Atlanta Public Schools, Austin Independent School District, Baltimore City Public Schools, Birmingham City Schools, Boston Public Schools, Broward County Public Schools, Buffalo City School District, Caddo Parish School District, Charleston County Public Schools, Charlotte-Mecklenburg Schools, Chicago Public Schools, Christina School District, Cincinnati Public Schools, Clark County School District, Cleveland Municipal School District, Columbus Public Schools, Dallas Independent School District, Dayton Public Schools, Denver Public Schools, Des Moines Independent Community School District, Detroit Public Schools, District of Columbia Public Schools, Duval County Public Schools, East Baton Rouge Parish School System, Fort Worth Independent School District, Fresno Unified School District, Guilford County Schools, Hillsborough County School District, Houston Independent School District, Indianapolis Public Schools, Jackson Public School District, Jefferson County Public Schools, Kansas City Missouri School District, Long Beach Unified School District, Los Angeles Unified School District, Memphis City Public Schools, Metropolitan Nashville Public Schools, Miami-Dade County Public Schools, Milwaukee Public Schools, Minneapolis Public Schools, New Orleans Public Schools, New York City Department of Education, Newark Public Schools, Norfolk Public Schools, Oakland Unified School District, Oklahoma City Public Schools, Omaha Public Schools, Orange County Public Schools, Palm Beach County Schools, Philadelphia Public Schools, Pittsburgh Public Schools, Portland Public Schools, Providence Public Schools, Richmond Public Schools, Rochester City School District, Sacramento City Unified School District, Salt Lake City School District, San Diego Unified School District, San Francisco Unified School District, Seattle Public Schools, St.

Louis Public Schools, St. Paul Public Schools, Toledo Public Schools, and Wichita Public Schools.